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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
No. 746

HOWARD LITTLE,

Petitioner,

vs.

CHARLES F. GREEN,

Respondent.

PETITIONER'S REPLY BRIEF

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Respondent objects to the petitioner's plea for a writ of certiorari asserting, in substance, that there was adequate factual proof to sustain the jury's verdict.

In the Court below, petitioner did not question the sufficiency of the factual proof to sustain the jury's verdict.

The opinion by the Court below holding that the weight of evidence was sufficient to sustain the jury's verdict is entirely foreign to petitioner's charge that he was denied equal justice. Now, the respondent likewise raises the immaterial and irrelevant question as to the weight of evidence.

Petitioner does not question the sufficiency or weight of the evidence to sustain a defendant's verdict. Petitioner claims the right to a fair and impartial trial, denied to him by the Trial Court, and such denial was not even mentioned in the opinion by the Court below.

Petitioner submits that he was entitled to have the Court below pass on the basic question as to whether or not the accumulation of improper appeals to bias, passion and prejudice by defense counsel to a local jury, including reference to the economic standing of respondent, erroneously stating that he was uninsured when, in fact, he was insured, constituted a denial of equal justice.

In addition thereto, the failure of the Trial Court to correct the erroneous statement of the law by defense counsel and ordering petitioner's counsel to "sit down" when petitioner's counsel objected to the erroneous statement of law, and misinforming the jury, in substance, that petitioner's counsel was indulging in improper objections, and that defense counsel was justified in the aforesaid erroneous remarks, certainly constituted prejudicial error.

There can be no question that the prejudice suffered by petitioner during the trial before the jury constituted a denial of a fair and impartial trial; and, the failure of the Trial Court to adequately instruct the jury as to the law of unseaworthiness, free from injecting irrelevant and confusing propositions of negligence law, all contributed to a miscarriage of justice.

Nothing in the decision by the Court below indicates that the Court as much as considered the charge of a denial to petitioner of a fair and impartial trial, in spite of the fact that the appeal was primarily based on the charge that the verdict was the result of bias, passion and prejudice and erroneous rulings and charge by the Trial Court.

It is respectfully submitted that the respondent's brief treats with the irrelevant and non-existing question of the weight of evidence and in nowise alters the fact that petitioner was erroneously denied his day in Court on the merits.

The error of the Trial Court and the failure of the Court below to consider petitioner's contention that he was denied a

fair and impartial trial seems to be clear and merits review by this Honorable Court.

The error of the Trial Court and the Court below comes into clear focus when considering well settled and uniform law, as expressed in the case of *Rendo v. Schermerhorn*, 24 A.D. 2d 773, 263 N.Y.S. 2d 743, wherein the Court stated:

> "Ordinarily, we are reluctant to disturb the verdict of a jury which participated in a long trial and particularly so where, as here, the trial was capably conducted by an experienced Trial Judge. Nevertheless, we can not condone the obvious reference to the lack of defendants' insurance coverage contained in defense counsel's summation, a fact which in the circumstances here may very well have engendered sympathy in the jurors' minds (Wisniewski v. Jem Novelty Corp., 22 A.D. 2d 10, 253 N.Y.S. 2d 418; Griffin v. Corporation of the Church of the Assumption, 14 A.D. 2d 620, 218 N.Y.S. 2d 141; Kuznicki v. Kuszowski, 2 A.D. 2d 216, 153 N.Y.S. 2d 705). This determination makes unnecessary any discussion of appellant's other contentions."

See also:

> *Throckmorton v. St. Louis-San Francisco Ry. Co.*, 179 F. 2d 165, cert. denied, 70 S. Ct. 797, 339 U.S. 944, 94 L. Ed. 1359

> *Crowell-Collier Pub. Co. v. Caldwell*,170 F. 2d 941

In an action against a hotel company by cashier for slander, argument of cashier's counsel in which it was suggested that company should respond in damages because it was rich and cashier was poor, thereby implying justice should be administered unequally as between rich and poor, was ground

for declaring mistrial, particularly in absence of evidence as to financial condition of company. *Washington Annapolis Hotel Co. v. Riddle*, 171 F. 2d 732, 83 U.S. App. D.C. 288.

See: *Gleaton v. Green*, 156 F. 2d 459

In the ordinary action for damages arising out of negligence, evidence relating to liability or other insurance is inadmissible. *Theurer v. Holland Furnace Co.*, 124 F. 2d 494.

Under Virginia law, evidence as to insurance coverage is inadmissible in action against insured and prejudicial to insured, and admission of such testimony or argument of counsel disclosing insurance coverage is reversible error. *Bowie v. Sorrell*, 113 F. Supp. 373, reversed 209 F. 2d 49.

The improper remarks by defense counsel were never cured by the Trial Court although due and timely objection was taken thereto.

As a matter of fact, the improper remarks were aggravated by the Trial Court's improper reprimanding of petitioner's counsel and, in substance, approving defense counsel's incorrect statement of the law, as well as, in substance, approving defense counsel's prejudicial remarks.

Behrman v. Sims, 157 F. 2d 862, 81 U.S. App. D.C. 303

It is respectfully submitted that justice was denied to petitioner and that the question presented is one which involves the right of every citizen seeking justice in our Courts who should be afforded a fair and impartial trial, free from bias, passion and prejudice and entitled to full, correct and proper rulings and instructions by trial courts, denied to the petitioner herein.

Respectfully submitted,

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Attorney for Petitioner